

THE FUTURE OF PARTNERSHIP AS A LEGAL ENTITY IN UZBEKISTAN

Askar Khasanovich Djumanov

Lecturer at the Department of Business Law at Tashkent State University of Law

E-mail: askar.djumanov@gmail.com

Annotation:

The article studies the legal nature of general and limited partnerships. This material provides a comparative analysis of the systemic principles of partnerships as legal entities in Western countries and Uzbekistan. The article focuses on the evolution of partnerships in a historical perspective. The paper points out that in many countries business partnerships are not a legal entity. The author points out that depending on the application of the theory of association and the theory of legal entity, both the understanding of a business partnership and its practical application would alter. The material indicates the main conditions for the creation of a limited liability company and a business partnership as separate institutions. The article indicates the main reasons for the unpopularity of business partnerships. The author pays attention to that limited liability companies are usually established in Uzbekistan, and if the theory of business partnerships is not changed, the latter can be withdrawn from the legislative field.

Keywords: corporation, partnerships, company, legal entity, limited liability, pooling of capital.

Before studying the relevance of partnership as a legal form, it is reasonable to review the historical perspective of emergence of partnership as a business form. In the history of law, there are many thoughts about the date of the emergence of this institute, the partnership is an ambiguous phenomenon and might be interpreted extendedly. Many scientists ascertain that general partnership was created as an institute in the middle age, especially in Europe. Inheritance division between the sons of a rich merchant was a reason for the creation of the partnership in the modern interpretation. After the death of the merchant, his children decided to continue his work and to save the family business they established a general partnership. The Fugger can be introduced as an outstanding example of a general partnership, which



was established by the brothers at the end of the fifteenth century in Germany [1, P.18].

Considering the nature of a partnership, especially its quantitative composition, we can view earlier periods of its revival. The partnership as an association of people for common business aims refers us to ancient civilizations like in Mesopotamia and Classical Rome. It should be mentioned that at present time the partnership is a relevant corporate form for business activity all around the world, especially in Western countries [2, P.1].

Simplicity in creation, management and responsibility were the reasons of creating the partnership as the first organization of business. These features assisted the partnership to have great importance and the place in the world and until the present time. The partnership is an appropriate legal form to satisfy the needs of two or more persons to join for running common business, who dislike to have complicated rules and requirements in a process of joint business. This condition acts as a core for legislative regulating the nature and role of the partnership in the legal space. Many states aim to alleviate maximum the regulation of the partnerships for available application by the entrepreneurs.

In relation to legislative recognition of partnership status, the Europe acted the main role. Especially in Royal ordinance of France about commerce, the definition “partnership” was mentioned in 1673 year. Later in Commercial code of France, the partnership has been used by implementation of definition “aggregate under one name” or “partnership under one name”. After France experience, the partnership obtained its rightful place in German legal system. Especially the partnership was mentioned at first in German Commercial Code of 1850, later in new German Commercial Code of 1900 year.

Legislative amendments in Europe served as a basis for implementation of partnership into legal system of Russian empire. It must be mentioned that the partnership in pre-revolutionary time was considered as legal entity. In western countries, legal personality of the partnership was denied and nowadays they have the same position [3, P.5]. Legislative recognition of the partnership in pre-revolutionary time and in Soviet Union legal system influenced to Uzbek legal system.

In the legislation of Uzbekistan, we must mention that the Civil code of Uzbekistan introduces the regulation of the partnerships. It should be mentioned that the code



includes only declarative norms without detailed regulation. Separate from the code, the legislator adopted a special law on partnership.

The rules of creation, operation, reorganization and liquidation of the partnerships are stipulated by the Law of Uzbekistan on partnerships No.308-II dated 06.12.2001 year (hereinafter referred to as “the Law”).

According to the Law, the partnership can be set up in two forms: general partnership and limited partnership. The concept of partnership includes as follows:

1. Commercial organization (legal entity is compulsory);
2. Charter capital is divided into shares;
3. The members or some of them personally participate in operation;
4. Not less than two members [4, P.3].

From the point of view of corporate structure, the partnership has common features with limited liability companies. However, the partnership has unique features, which distinguish from other types of company. Taking into account of the features of limited liability Company, we can say that this type of company is aggregate of capital, first of all, the partnership – aggregate of hands.

In case of general partnership set up, the members have subsidiary responsibility with its property for partnership’s obligation. This norm means that in case of storage of partnership’s property, the members must pay the debts with personal property. The creditors must claim submit a claim to partnership, only in case of impossibility satisfying debts, they are entitled to submit a claim to the members (general partners).

The founders in general partnership can be only individual entrepreneurs without legal entity status and commercial organizations. Therefore, individuals (who have not passed the registration) and non-commercial organizations are not entitled to be members in general partnership. In addition, they cannot be general partners in limited partnership.

In case of limited partnership, its corporate structure similar to general partnership, but it is allowed to have the contributors. These contributors are obliged for partnership debts before creditors limited to contribution amount. Any legal entity and individuals can act as contributors. In this point of view, we can say that limited partnership members familiar to members of limited liability company, but there may be limited rights in management of partnership.

The main disadvantages of partnership in Uzbekistan as follows:



1. Compulsory public registration as legal entity;
2. Additional responsibility of members;
3. Absence of specific privileges under tax and bank laws;
4. Limited number of persons as general partners.

Because of legal personality, it is required to pass public registration to set up partnership. Despite its unique features comparing to other legal entities, partnership must pass single procedures of registration.

The main advantage of limited liability company (hereinafter referred to as “LLC”) comparing to partnership is limited liability of its founders (members) to their contribution [5, P.3].

In case of choosing one of two options, for sure, entrepreneur will choose LLC, which has limited liability of founders.

According to statistics, as at April 2022, the number of registered LLC is 217 415 entities. The number of registered partnerships is 34 [6]. This data shows that partnerships are absolutely unpopular legal entity, and its number is 6 300 times less than LLC.

We can openly declare that LLC construction is more attractive than partnerships for abovementioned reason. This stipulation is proved by statistic data. An important advantage of LLC is possibility to be established by single person (any individual and legal entity). For small business, corporate construction, which allows to single individual act as a founder, director and have limited liability, it is impossible to find better structure than LLC.

Absence of fundamental changes in corporate structure will lead to the moment, when law on partnership will be excluded from our legislation.

The nature of partnership in my thoughts bases on recognition as legal entity. According to doctrine, legal entity institution was invented to limit business owner responsibility. Legal entity as corporate shield was to protect private property of owner. Due to the fact, initially legal entity was absent in law system, all members in corporation based on agreement.

The partnership is considered the institute, which is not incorporated or not having legal entity status in US and some countries of Western Europe. The partnership is attractive with its simplicity in management, creation and liquidation.

To understand the nature of partnership we must base on two main western principles: “aggregate theory” and “legal personality” [7, P.35]. From using one of



these theories, legal regulation and recognition may alter. In case of using aggregate theory, the partnership must be recognized as union of persons, not as separate person. In case of using legal entity theory, the partnership shall be considered as separate legal entity. Giving the legal personality to partnership, this makes partnership as a separate person in tax payment, and the partnership must pay corporate tax and its members pay individual income tax. Application of aggregate theory, like in foreign countries, will lead to that the partnership is not obliged to corporate tax.

Legal entity is separate subject of civil relations and it should retain the existence in case of its member exit. For example in case of LLC, this type of company can continue existence if it all members exited. However, the partnership is not allowed to continue existence with one member [8, P.240].

Conclusion

I think the legislation must change methods of regulation in the present understanding of law, change requirements to partnership members, change legal status of partnership, and change also tax mechanisms of regulation. Otherwise, in near future partnerships will be expelled from the practice and legal system.

The main condition in understanding the nature of partnership is application of principles “aggregate theory” or “legal personality”, from using one of these theories, the whole system of partnerships will change.

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